

ASSEMBLY BILL

No. 378

Introduced by Assembly Member Cook

February 23, 2009

An act to amend Section 12301.6 of the Welfare and Institutions Code, relating to in-home supportive services.

LEGISLATIVE COUNSEL'S DIGEST

AB 378, as introduced, Cook. In-Home Supportive Services: provider training.

Existing law provides for the In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. Existing law permits services to be provided under the IHSS program either through the employment of individual providers, a contract between the county and an entity for the provision of services, the creation by the county of a public authority, or a contract between the county and a nonprofit consortium. Under existing law, the functions of a nonprofit consortium contracting with the county, or a public authority established for this purpose, include providing training for providers and recipients.

This bill would require each public authority or nonprofit consortium, in consultation with its advisory committee and stakeholders, to develop training standards and core topics, to be used in training it provides.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 12301.6 of the Welfare and Institutions Code is amended to read:

12301.6. (a) Notwithstanding Sections 12302 and 12302.1, a county board of supervisors may, at its option, elect to do either of the following:

(1) Contract with a nonprofit consortium to provide for the delivery of in-home supportive services.

(2) Establish, by ordinance, a public authority to provide for the delivery of in-home supportive services.

(b) (1) To the extent that a county elects to establish a public authority pursuant to paragraph (2) of subdivision (a), the enabling ordinance shall specify the membership of the governing body of the public authority, the qualifications for individual members, the manner of appointment, selection, or removal of members, how long they shall serve, and other matters as the board of supervisors deems necessary for the operation of the public authority.

(2) A public authority established pursuant to paragraph (2) of subdivision (a) shall be both of the following:

(A) An entity separate from the county, and shall be required to file the statement required by Section 53051 of the Government Code.

(B) A corporate public body, exercising public and essential governmental functions and that has all powers necessary or convenient to carry out the delivery of in-home supportive services, including the power to contract for services pursuant to Sections 12302 and 12302.1 and that makes or provides for direct payment to a provider chosen by the recipient for the purchase of services pursuant to Sections 12302 and 12302.2. Employees of the public authority shall not be employees of the county for any purpose.

(3) (A) As an alternative, the enabling ordinance may designate the board of supervisors as the governing body of the public authority.

(B) Any enabling ordinance that designates the board of supervisors as the governing body of the public authority shall also specify that no fewer than 50 percent of the membership of the advisory committee shall be individuals who are current or past users of personal assistance services paid for through public or private funds or recipients of services under this article.

1 (C) If the enabling ordinance designates the board of supervisors
2 as the governing body of the public authority, it shall also require
3 the appointment of an advisory committee of not more than 11
4 individuals who shall be designated in accordance with
5 subparagraph (B).

6 (D) Prior to making designations of committee members
7 pursuant to subparagraph (C), or governing body members in
8 accordance with paragraph (4), the board of supervisors shall solicit
9 recommendations of qualified members of either the governing
10 body of the public authority or of any advisory committee through
11 a fair and open process that includes the provision of reasonable
12 written notice to, and a reasonable response time by, members of
13 the general public and interested persons and organizations.

14 (4) If the enabling ordinance does not designate the board of
15 supervisors as the governing body of the public authority, the
16 enabling ordinance shall require the membership of the governing
17 body to meet the requirements of subparagraph (B) of paragraph
18 (3).

19 (c) (1) Any public authority created pursuant to this section
20 shall be deemed to be the employer of in-home supportive services
21 personnel referred to recipients under paragraph (3) of subdivision
22 (e) within the meaning of Chapter 10 (commencing with Section
23 3500) of Division 4 of Title 1 of the Government Code. Recipients
24 shall retain the right to hire, fire, and supervise the work of any
25 in-home supportive services personnel providing services to them.

26 (2) (A) Any nonprofit consortium contracting with a county
27 pursuant to this section shall be deemed to be the employer of
28 in-home supportive services personnel referred to recipients
29 pursuant to paragraph (3) of subdivision (e) for the purposes of
30 collective bargaining over wages, hours, and other terms and
31 conditions of employment.

32 (B) Recipients shall retain the right to hire, fire, and supervise
33 the work of any in-home supportive services personnel providing
34 services for them.

35 (d) A public authority established pursuant to this section or a
36 nonprofit consortium contracting with a county pursuant to this
37 section, when providing for the delivery of services under this
38 article by contract in accordance with Sections 12302 and 12302.1
39 or by direct payment to a provider chosen by a recipient in
40 accordance with Sections 12302 and 12302.2, shall comply with

1 and be subject to, all statutory and regulatory provisions applicable
2 to the respective delivery mode.

3 (e) Any nonprofit consortium contracting with a county pursuant
4 to this section or any public authority established pursuant to this
5 section shall provide for all of the following functions under this
6 article, but shall not be limited to those functions:

7 (1) The provision of assistance to recipients in finding in-home
8 supportive services personnel through the establishment of a
9 registry.

10 (2) (A) (i) The investigation of the qualifications and
11 background of potential personnel. The investigation may, with
12 respect to any prospective registry applicant who is not employed
13 before January 1, 2008, include criminal background checks
14 requested by the nonprofit consortium or public authority and
15 conducted by the Department of Justice pursuant to Section 15660,
16 for those public authorities or nonprofit consortia using the
17 agencies on January 1, 2008.

18 (ii) Upon notice from the Department of Justice notifying the
19 public authority or nonprofit consortium that the prospective
20 registry applicant has been convicted of a criminal offense specified
21 in Section 12305.81, the public authority or nonprofit consortium
22 shall deny the request to be placed on the registry for providing
23 supportive services to any recipient of the In-Home Supportive
24 Services program.

25 (B) If an applicant is rejected as a result of information contained
26 in the criminal background report, the applicant shall be advised
27 in writing of his or her right to request a copy of his or her own
28 criminal history record from the Department of Justice, as provided
29 in Article 5 (commencing with Section 11120) of Chapter 1 of
30 Title 1 of Part 4 of the Penal Code, to review the information for
31 accuracy and completeness. The applicant shall be advised that if,
32 upon review of his or her own criminal history record he or she
33 finds the information to be inaccurate or incomplete, the applicant
34 shall have the right to submit a formal challenge to the Department
35 of Justice to contest the criminal background report.

36 (C) An applicant shall be informed of his or her right to a waiver
37 of the fee for obtaining a copy of a criminal history record, and of
38 how to submit a claim and proof of indigency, as required by
39 Section 11123 of the Penal Code.

(D) No fee shall be charged to a provider, potential personnel, or service recipient to cover any costs of administering this paragraph associated with criminal background checks, or the cost to the Department of Justice or any law enforcement agency for processing the criminal background check. Nothing in this paragraph shall be construed to prohibit the Department of Justice from assessing a fee pursuant to Section 11105 or 11123 of the Penal Code to cover the cost of furnishing summary criminal history information. A public authority or nonprofit consortium shall not seek reimbursement unless the conditions described in subparagraph (F) are met.

(E) As used in this section, “nonprofit consortium” means a nonprofit public benefit corporation that has all powers necessary to carry out the delivery of in-home supportive services under the delegated authority of a government entity.

(F) (i) Upon verification that at least 50 percent of the public authority or nonprofit consortium list of registry applicants have received a criminal background check, the county may request reimbursement for the nonfederal share of cost associated with the criminal fingerprint record check in accordance to the fiscal claiming methodology.

(ii) The public authority or nonprofit consortium shall provide a report to the State Department of Social Services on the number of prospective registry applicants that have been referred to the Department of Justice for a criminal background check.

(iii) The Department of Justice shall provide verification to the State Department of Social Services on the number of prospective registry applicants that have completed a criminal background check.

(3) Establishment of a referral system under which in-home supportive services personnel shall be referred to recipients.

(4) (A) Providing for training for providers and recipients.

(B) *A public authority or nonprofit consortium, with input from its advisory committee and other stakeholders, shall develop training standards and core topics for the training that it provides pursuant to subparagraph (A).*

(5) (A) Performing any other functions related to the delivery of in-home supportive services.

(B) (i) Upon request of a recipient of in-home supportive services pursuant to this chapter, or a recipient of personal care

1 services under the Medi-Cal program pursuant to Section 14132.95,
2 a public authority or nonprofit consortium may provide a criminal
3 background check on a nonregistry applicant or provider from the
4 Department of Justice, in accordance with clause (i) of
5 subparagraph (A) of paragraph (2) of subdivision (e). If the person
6 who is the subject of the criminal background check is not hired
7 or is terminated because of the information contained in the
8 criminal background report, the provisions of subparagraph (B)
9 of paragraph (2) of subdivision (e) shall apply.

10 (ii) A recipient of in-home supportive services pursuant to this
11 chapter or a recipient of personal care services under the Medi-Cal
12 program may elect to employ an individual as their service provider
13 notwithstanding the individual's record of previous criminal
14 convictions, unless those convictions include any of the offenses
15 specified in Section 12305.81.

16 (6) Ensuring that the requirements of the personal care option
17 pursuant to Subchapter 19 (commencing with Section 1396) of
18 Chapter 7 of Title 42 of the United States Code are met.

19 (f) (1) Any nonprofit consortium contracting with a county
20 pursuant to this section or any public authority created pursuant
21 to this section shall be deemed not to be the employer of in-home
22 supportive services personnel referred to recipients under this
23 section for purposes of liability due to the negligence or intentional
24 torts of the in-home supportive services personnel.

25 (2) In no case shall a nonprofit consortium contracting with a
26 county pursuant to this section or any public authority created
27 pursuant to this section be held liable for action or omission of any
28 in-home supportive services personnel whom the nonprofit
29 consortium or public authority did not list on its registry or
30 otherwise refer to a recipient.

31 (3) Counties and the state shall be immune from any liability
32 resulting from their implementation of this section in the
33 administration of the In-Home Supportive Services program. Any
34 obligation of the public authority or consortium pursuant to this
35 section, whether statutory, contractual, or otherwise, shall be the
36 obligation solely of the public authority or nonprofit consortium,
37 and shall not be the obligation of the county or state.

38 (g) Any nonprofit consortium contracting with a county pursuant
39 to this section shall ensure that it has a governing body that
40 complies with the requirements of subparagraph (B) of paragraph

1 (3) of subdivision (b) or an advisory committee that complies with
2 subparagraphs (B) and (C) of paragraph (3) of subdivision (b).

3 (h) Recipients of services under this section may elect to receive
4 services from in-home supportive services personnel who are not
5 referred to them by the public authority or nonprofit consortium.
6 Those personnel shall be referred to the public authority or
7 nonprofit consortium for the purposes of wages, benefits, and other
8 terms and conditions of employment.

9 (i) (1) Nothing in this section shall be construed to affect the
10 state's responsibility with respect to the state payroll system,
11 unemployment insurance, or workers' compensation and other
12 provisions of Section 12302.2 for providers of in-home supportive
13 services.

14 (2) The Controller shall make any deductions from the wages
15 of in-home supportive services personnel, who are employees of
16 a public authority pursuant to paragraph (1) of subdivision (c), that
17 are agreed to by that public authority in collective bargaining with
18 the designated representative of the in-home supportive services
19 personnel pursuant to Chapter 10 (commencing with Section 3500)
20 of Division 4 of Title 1 of the Government Code and transfer the
21 deducted funds as directed in that agreement.

22 (3) Any county that elects to provide in-home supportive
23 services pursuant to this section shall be responsible for any
24 increased costs to the in-home supportive services case
25 management, information, and payrolling system attributable to
26 that election. The department shall collaborate with any county
27 that elects to provide in-home supportive services pursuant to this
28 section prior to implementing the amount of financial obligation
29 for which the county shall be responsible.

30 (j) To the extent permitted by federal law, personal care option
31 funds, obtained pursuant to Subchapter 19 (commencing with
32 Section 1396) of Chapter 7 of Title 42 of the United States Code,
33 along with matching funds using the state and county sharing ratio
34 established in subdivision (c) of Section 12306, or any other funds
35 that are obtained pursuant to Subchapter 19 (commencing with
36 Section 1396) of Chapter 7 of Title 42 of the United States Code,
37 may be used to establish and operate an entity authorized by this
38 section.

39 (k) Notwithstanding any other provision of law, the county, in
40 exercising its option to establish a public authority, shall not be

1 subject to competitive bidding requirements. However, contracts
2 entered into by either the county, a public authority, or a nonprofit
3 consortium pursuant to this section shall be subject to competitive
4 bidding as otherwise required by law.

5 (l) (1) The department may adopt regulations implementing
6 this section as emergency regulations in accordance with Chapter
7 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
8 Title 2 of the Government Code. For the purposes of the
9 Administrative Procedure Act, the adoption of the regulations shall
10 be deemed an emergency and necessary for the immediate
11 preservation of the public peace, health and safety, or general
12 welfare. Notwithstanding Chapter 3.5 (commencing with Section
13 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
14 these emergency regulations shall not be subject to the review and
15 approval of the Office of Administrative Law.

16 (2) Notwithstanding subdivision (h) of Section 11346.1 and
17 Section 11349.6 of the Government Code, the department shall
18 transmit these regulations directly to the Secretary of State for
19 filing. The regulations shall become effective immediately upon
20 filing by the Secretary of State.

21 (3) Except as otherwise provided for by Section 10554, the
22 Office of Administrative Law shall provide for the printing and
23 publication of these regulations in the California Code of
24 Regulations. Emergency regulations adopted pursuant to this
25 subdivision shall remain in effect for no more than 180 days.

26 (m) (1) In the event that a county elects to form a nonprofit
27 consortium or public authority pursuant to subdivision (a) before
28 the State Department of Health Care Services has obtained all
29 necessary federal approvals pursuant to paragraph (3) of
30 subdivision (j) of Section 14132.95, all of the following shall apply:

31 (A) Subdivision (d) shall apply only to those matters that do
32 not require federal approval.

33 (B) The second sentence of subdivision (h) shall not be
34 operative.

35 (C) The nonprofit consortium or public authority shall not
36 provide services other than those specified in paragraphs (1), (2),
37 (3), (4), and (5) of subdivision (e).

38 (2) Paragraph (1) shall become inoperative when the State
39 Department of Health Care Services has obtained all necessary

1 federal approvals pursuant to paragraph (3) of subdivision (j) of
2 Section 14132.95.

3 (n) (1) One year after the effective date of the first approval by
4 the department granted to the first public authority, the Bureau of
5 State Audits shall commission a study to review the performance
6 of that public authority.

7 (2) The study shall be submitted to the Legislature and the
8 Governor not later than two years after the effective date of the
9 approval specified in subdivision (a). The study shall give special
10 attention to the health and welfare of the recipients under the public
11 authority, including the degree to which all required services have
12 been delivered, out-of-home placement rates, prompt response to
13 recipient complaints, and any other issue the director deems
14 relevant.

15 (3) The report shall make recommendations to the Legislature
16 and the Governor for any changes to this section that will further
17 ensure the well-being of recipients and the most efficient delivery
18 of required services.

19 (o) Commencing July 1, 1997, the department shall provide
20 annual reports to the appropriate fiscal and policy committees of
21 the Legislature on the efficacy of the implementation of this
22 section, and shall include an assessment of the quality of care
23 provided pursuant to this section.

24 (p) (1) Notwithstanding any other provision of law, and except
25 as provided in paragraph (2), the department shall, no later than
26 January 1, 2009, implement subparagraphs (A) and (B) through
27 an all county letter from the director:

28 (A) Subparagraphs (A) and (B) of paragraph (2) of subdivision
29 (e).

30 (B) Subparagraph (B) of paragraph (5) of subdivision (e).

31 (2) The department shall, no later than July 1, 2009, adopt
32 regulations to implement subparagraphs (A) and (B) of paragraph
33 (1).

34 (q) The amendments made to paragraphs (2) and (5) of
35 subdivision (e) made by the act that added this subdivision during
36 the 2007–08 Regular Session of the Legislature shall only be
37 implemented to the extent that an appropriation is made in the
38 annual Budget Act or other statute, except for the amendments

- 1 that added subparagraph (D) of paragraph (2) of subdivision (e),
- 2 which shall go into effect January 1, 2009.

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